S.B.CIVIL TRANSFER PETITION NO.32/2006

Bajranglal
vs.
Prakash Chandra Gupta & Ors.

DATE OF ORDER ::: 8.8.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.Chaitanya Gahlot for Mr.BS Shekhawat, for petitioner.

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Heard learned counsel for the petitioner.

According to learned counsel for the petitioner, the suit was decreed in favour of respondents no.2 to 9 by the trial court against which an appeal was preferred by the respondent no.10 in this Court and was withdrawn by him. According to learned counsel for the petitioner, the decree was obtained collusively, therefore, the real owner of the property – petitioner filed the civil suit which was dismissed on an application filed by the decree holder under Order 7 Rule 11 CPC and against which first appeal was preferred before this Court being S.B. Civil First Appeal No.68/2006 which too was dismissed on 3.7.2006, against which a SLP has been preferred before the Hon'ble Apex Court which is pending. However, in the said SLP, neither the leave has been granted nor any interim order has been passed by the Hon'ble Apex Court.

It is submitted that the decree holder submitted execution petition wherein the petitioner has submitted objections. It is submitted that before the executing court, the petitioner pointed out that the SLP is pending before the Hon'ble Supreme Court and the petitioner is pursuing that appeal, therefore, the proceedings in the case may be stayed or the execution petition may be adjourned but according to the petitioner, the respondent no.1 – Presiding Officer of the Court of District Judge, Churu is adamant to proceed with the execution petition.

In the transfer petition, it has been submitted that one Shree Niwas Mandavewala, who is power of attorney holder of respondents no.2 to 9, told one Sita Ram s/o Pali Ramji Tailor that he is very much convinced for decision in the matter because of the reason that the respondent no.1 – District Judge assured him at his residence that the decision will be in favour of the decree holder.

According to the learned counsel for the petitioner, a collusive decree was obtained by the respondents no.2 to 9 for the property of the petitioner and the petitioner was pursuing his legal remedy as available under the law and has filed the suit and though that was dismissed but he has preferred appeal before this Court which too was dismissed against which he has preferred SLP before the Hon'ble Supreme Court. This Court dismissed the first appeal on 3.7.2006 and the petitioner preferred SLP, therefore, in

view of such a short period, the executing court should have adjourned the matter and should have granted time to judgment debtor. It is also submitted that there are personal allegations against the Presiding Officer and in view of the above, the execution petition may be transferred.

I considered the submissions of learned counsel for the petitioner and perused the facts mentioned in the transfer petition itself.

It is clear from the facts mentioned in the transfer petition itself that the civil original suit must have been filed either in the year 1989 or before that as the suit is having no.106/1989 (new no.17/2004). The suit was decreed on 11.12.2004 after about 15 years. The appeal was preferred by the original defendant and that was dismissed though according to the petitioner, it was dismissed as withdrawn. So far as the period consumed in the original litigation is concerned, that is also relevant but not for the purpose of deciding the present transfer petition.

The allegations against the Presiding Officer are absolutely vague and particularly, the alleged power of attorney Shree Niwas Mandavewala himself has not been impleaded as party in the transfer petition against whom there are allegations that he told one Sita Ram that the decree holder will get the decision in their favour. Though there is affidavit of Sita Ram annexed with this transfer

petition but that is only to the effect what he heard from said Shree Niwas.

In view of the above, this transfer petition, having no substance, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya